

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>CENTRAL ILLINOIS LIGHT COMPANY</b>	)	
<b>D/B/A Ameren/CILCO</b>	)	
	)	<b>No. 05-0160</b>
<b>Proposal to implement a competitive procurement</b>	)	
<b>Process by establishing Rider BGS, Rider BGS-L,</b>	)	
<b>Rider RTP, Rider RTP-L, Rider D, and Rider MV</b>	)	
	)	
<b>CENTRAL ILLIONOIS PUBLIC SERVICE COMPANY</b>	)	
<b>d/b/a AmerenCIPS</b>	)	
	)	<b>No. 05-0161</b>
<b>Proposal to implement a competitive procurement</b>	)	
<b>Process by establishing Rider BGS, Rider BGS-L,</b>	)	
<b>Rider RTP, Rider RTP-L, Rider D, and Rider MV</b>	)	
	)	
<b>ILLINOIS POWER COMPANY</b>	)	
<b>d/b/a AmerenIP</b>	)	
	)	<b>No. 05-0162</b>
<b>Proposal to implement a competitive procurement</b>	)	
<b>Process by establishing Rider BGS, Rider BGS-L,</b>	)	
<b>Rider RTP, Rider RTP-L, Rider D, and Rider MV</b>	)	

**MOTION TO RESCHEDULE AND CLARIFY THE SCOPE OF ORAL ARGUMENT  
BY THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois; hereby move, pursuant to *Ill. Admin. Code Section 200.190(a)*, to reschedule the July 5, 2005 oral argument, which was announced late yesterday by the Illinois Commerce Commission (“Commission” or “ICC”). The oral argument concerns a Petition for Interlocutory Review<sup>1</sup> (“Petition”) in this docket which raises a single issue of law: whether Section 16-103(c) of the Public Utilities Act authorizes

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<sup>1</sup> The Petition for Interlocutory Review was filed by the People of the State of Illinois, the Citizens Utility Board and the Environmental Law and Policy Center

the Commission to approve market-based rates for the Ameren Companies' captive customers.

The Commission's decision to schedule oral argument on a Petition for Interlocutory Review appears to be unprecedented. Indeed, during the Commission's pre-bench session on June 28, 2005, Commissioner Kevin Wright noted this is the only such instance that he can recall since he joined the Commission in 2002. During the same pre-bench session ICC Chairman Ed Hurley stated that he was proposing the oral argument because "this issue is huge" and because "we have to take it very seriously."

The People agree that the issue raised in the Petition is "huge" and must be taken "very seriously." Indeed the decisions made on this issue could affect the rates that Illinois consumers pay for electricity for years to come. A misinterpretation of Section 16-103(c) of the Public Utilities Act could prove very costly for the People of Illinois.

The Commission's decision to schedule the oral argument on July 5, 2005 does not allow sufficient time for "serious" preparation on the "huge" legal issue raised in the Petition. The Commission's decision does not allow adequate time to review the Responses to the Petition filed today (June 28, 2005) and denies Petitioners sufficient time to review the Administrative Law Judge's ("ALJ") report on this matter, which is yet to be filed and served in accordance with *Ill. Admin. Code Section 200.520*. Imposing such an unnecessarily tight schedule for oral argument is not only inconsistent with Chairman Hurley's observations regarding the importance of this case, it is a violation of the People's due process rights.

Based on the discussion at the pre-bench session, it appears that the Commission's decision to schedule oral argument (and to provide only seven days notice) relies on the oral argument provision that appears at *Ill. Admin. Code Section 200.850*. Reliance on *Ill. Admin. Code Section 200.850* is inappropriate because this docket is currently in the "pre-hearing and discovery" phase, rather than the hearing phase of the case – and *Ill. Admin. Code Section 200.850* is a rule that pertains to hearing procedure. Hence, *Ill. Admin. Code Section 200.850* is not applicable in this case at this time.

The expedited seven-day notice period for oral argument that appears in *Ill. Admin. Code Section 200.850* – which may be appropriate when parties appear for formal hearings scheduled far in advance – cannot be used to justify a seven-day notice period in the pre-hearing phase of a case, during which parties can reasonably expect some degree of flexibility. Hence, it is perhaps not surprising that several attorneys for Petitioners are unavailable July 5, 2005. This is an additional reason to reschedule the argument.

Finally, there appears<sup>2</sup> to be some confusion regarding the scope of the oral argument. The only issue that is properly before the Commission at this time is the narrow legal issue raised in the Petition. The scope of oral argument must, therefore, be limited to the issue of law raised in the Petition: whether Section 16-103(c) of the Public Utilities Act authorizes the Commission to approve market-based rates for the Ameren Companies' captive customers. Other issues that were

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<sup>2</sup> Some of the Commissioners' comments during the June 28, 2005 pre-bench session and the ALJ's June 29, 2005 notice regarding participation in the oral argument make reference to the Motion to Dismiss filed in this case on May 17, 2005. Some of the responsive pleadings filed today also appear to address issues raised in the Motion to Dismiss which are not raised in the Petition.

raised in the Motion to Dismiss, which have not been raised in the Petition for Review, are not before the Commission at this time and should not be addressed at oral argument.

Consequently, the People request that the oral argument be rescheduled on or after July 14, 2005, at which time counsel for all Petitioners will be available and will have had an adequate opportunity to review the Responses submitted by other parties and the ALJ's filings, submitted pursuant to *Ill. Admin. Code Section 200.520*. This will also allow time for the Commission to clarify the proper scope of the oral argument for all parties.

### **Background**

On February 28, 2005, the Ameren Companies filed several tariffs, including Riders BGS, BGS-L, D and MV, with the Commission.

On March 9, 2005, the Commission opened docket nos. 05-0160, 05-0161 and 05-0162 to investigate "the propriety of the proposed tariff sheets" and suspended Riders BGS, BGS-L, D and MV, as well as the other tariffs proposed by the Ameren Companies. Suspension Order, ICC Docket No. 05-0160, Suspension Order, ICC Docket No. 05-0161, Suspension Order, ICC Docket No. 05-0162, March 9, 2005.

On May 17, 2005, a Motion to Dismiss the request for approval of Riders BGS, BGS-L, D and MV was filed by the People of the State of Illinois, the Citizens Utility Board and the Environmental Law and Policy Center.

On June 1, 2005, an ALJ Ruling was issued denying the Motion to Dismiss the request for approval of Riders BGS, BGS-L, D and MV.

On June 22, 2005, a Petition for Interlocutory Review was filed by Petitioners.

On June 28, 2005, the Commission issued a "Notice of Commission Action" stating that the Commission, on its own motion, decided to schedule an oral argument on the Petition on July 5, 2005.

On June 29, 2005, the ALJ notified the parties to this proceeding that: "Joint filers, whose pleadings relating to the motion to dismiss were made jointly with other parties, shall designate one representative to present argument . . ."

On June 29, 2005, the Building Owners and Managers Association, Commonwealth Edison, Midwest Generation, and the Ameren Companies filed replies to the Petition for Interlocutory Review.

#### **Motion to Reschedule and Clarify the Scope of Oral Argument**

The People move to reschedule and clarify the scope of oral argument and state as follows:

1. Late yesterday (June 28, 2005) the ICC Chief Clerk served notice on the parties in the above-captioned case that an oral argument on the pending Petition would be held on July 5, 2005.
2. This afternoon (June 29, 2005), four parties filed approximately 60 pages of Responses to the Petition.
3. The ALJ has not yet filed the report to the Commission which is required under *Ill. Admin. Code Section 200.520* and which must be served on all parties.
4. Three of the remaining five days before the scheduled oral argument -- July 2 through July 4, 2005 -- are a holiday weekend.

5. The People cannot properly prepare for oral argument on the “huge” issue presented by this Petition in the time allotted by the Commission. There is not adequate time to review the almost 60 pages of Responses to the Petition, and the parties have not even seen the ALJ’s report to the Commission that is required under *Ill. Admin. Code Section 200.520*. Even if the Administrative Law Judge were able to complete a thorough review of today’s responsive filings, as well as the Petition, before the July Fourth holiday weekend it would not afford sufficient time to prepare for oral argument.

6. This afternoon the ALJ issued a notice that places additional burdens on the People -- because it requires Petitioners, unlike any other major parties in this case, to develop a *joint* oral argument presentation. This will take considerable time, which the schedule does not allow.

7. Requiring the People to appear for oral argument under these circumstances violates basic due process rights which must be accorded to parties that participate in Commission proceedings. *Ill. Admin. Code Section 200.520* does not authorize the Commission to schedule oral arguments on a mere seven days notice during the pre-hearing and discovery phase of a proceeding.

8. Counsel for several of the Petitioners are unavailable on July 5, 2005, the date on which oral argument has been scheduled.

9. Three of the four attorneys who appeared on the Petition on behalf of the Attorney General are scheduled to be out of state or out of the country on July 5, 2005. The remaining attorney representing the Attorney General in this proceeding

is also unavailable because she will be filing a major brief in another ICC docket (04-0779) on July 5, 2005.

10. The attorneys scheduled to be out of state or out of the country on July 5, 2005 have either already departed or are unable to reschedule their prior commitments without incurring significant personal expense and inconvenience -- because of the short time available between the Commission's notice and the date of the oral argument. These attorneys could not have anticipated that the Commission would take the unprecedented step of scheduling an oral argument on the Petition at the time they made these commitments.

11. The Petition raises a single issue of law: whether Section 16-103(c) of the Public Utilities Act authorizes the Commission to approve market-based rates for the Ameren Companies' captive customers. This is the only issue that is properly before the Commission at this time and the scope of oral argument must, therefore, be limited to this legal issue. The Commission should clarify the scope of the oral argument to ensure that everyone involved understands that other issues raised in the Motions to Dismiss are not before the Commission at this time.

12. Rescheduling Oral argument on or after July 14, 2005, when counsel for all Petitioners will be available and counsel will have had an adequate opportunity to review the filings submitted pursuant to *Ill. Admin. Code Section 200.520*, would not delay the hearings in this case (which are scheduled to commence on August 29, 2005) or otherwise disrupt the schedule in this case.

WHEREFORE, we respectfully request that the Commission reschedule oral argument on the Petition for Interlocutory Review on or after July 14, 2005, when counsel for all Petitioners will be available to appear and counsel will have had an adequate opportunity to review the filings submitted pursuant to Ill. Admin. Code Section 200.520. In the interim, we also request that the Commission clarify the proper scope of the oral argument.

Respectfully submitted,

**The People of the State of Illinois, by and  
through LISA MADIGAN,  
Illinois Attorney General**

By: \_\_\_\_\_/s/\_\_\_\_\_

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